SINGLE BENCH

C. S. 100/-

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No. 2735 of 2006

PETITIONER: Smt. Neelam Agrawal,
W/o Bal Krishna Agrawal,
Aged about 35 years,
Occupation: Business,
R/o 24, Doongaji Colony,
Raipur, Chhattisgarh.

- Versus -

RESPONDENTS:

1. State of Chhattisgarh,
Through the Secretary,
Department of Housing and
Environment, D.K.S. Bhawan,
Mantralaya, Raipur,
Chhattisgarh.

2. Collector, Collectorate,
Raipur, District: Raipur,
Chhattisgarh.

3. Director,
Town & Country Planning,
Raipur, Chhattisgarh.

4. Municipal Corporation, Raipur,
Through its Commissioner,
Corporate Building, Raipur,
Chhattisgarh.

5. Tehsildar, Raipur, Chhattisgarh.

P.R. No. 2288/06
Presented by Shri K.S. Sahu
dated 12/6/06

RECEIVED-COPY
A.G. BILASPUR
12/6/06
CLF

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT/WRITS, DIRECTIONS ETC., IN THE NATURE OF MANDAMUS, CERTIORARI AND/OR ANY OTHER SUITABLE WRIT OF LIKE NATURE

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10-7-2006

Mr. Rajeev Shrivastava, counsel for the petitioner.

Mr. Sumesh Bajaj, Government Advocate for the State/respondents No.1, 2, 3 & 5.

Mr. H.B. Agrawal, Senior Advocate for respondent No.4.

Heard on I.A.No.5858/2006, application for amendment, as well as on admission.

The petitioner has filed this writ petition under Article 226/227 of the Constitution of India, with a prayer to quash the order dated 24-4-2006 (Annexure P-6) and hold the same as void and inoperative, and the respondents be restrained from demolishing the building of the petitioner.

The case of the petitioner is that the petitioner is owner of the land and building situated at Khasra Nos.221/10 and 221/14, Patwari Halka No.105, Village: Mathpuraina, District: Raipur and there is a building standing on that land. The building was constructed in the year 1989 for the purpose of running a school named and styled as Cambridge Public School and the school was in operation till 1998. Thereafter, the building has been given on rent to a private University namely, G.H. Raisoni International University. However, due to the political vendetta towards the husband of the petitioner namely, Bal Krishna Agrawal, without taking recourse of law, the Officers of respondent No.4 started threatening the petitioner for demolition of the building. Apprehending illegal action of the respondents, W.P.No.3048/2005 was filed before this Court and vide order dated 24-8-2005 this Court disposed of the writ petition while observing that

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

respondent No.4 herein is not precluded from approaching the Revenue Department for demarcation of the land of respondent No.4 as well as the petitioner, in presence of both the parties, in accordance with law. However, the respondents have started demolition of the building of the petitioner situated at Village: Mathpuraina at about 5 p.m. on 9-6-2006. The action of the respondents is arbitrary. Municipal Corporation, Raipur has passed an order on 11-7-2005 stating therein that the petitioner has encroached 10,100 sq. mts. of land. W.P.No.1867/2005 was filed by the petitioner herein and same was disposed of with a direction that the respondents should not remove the building or structure of the petitioner without following the due process of law. Thereafter, the petitioner filed a writ petition, which was registered as W.P.No.3048/2005 and same was disposed of on 24-8-2005. Misreading the said order, respondent No.5 issued a notice to the petitioner on 21-3-2006 for demarcation of the land. The petitioner sought some time to reply and no notice was served on the petitioner. On 9-6-2006, the petitioner came to know from the news published in Desh Bandhu, Raipur, that the building of the petitioner is to be demolished.

In the reply to the instant writ petition, return has been filed on behalf of respondent No.4 in which it has been submitted that the petitioner filed W.P.No.1867/2005 and in which it was submitted that on the land of Corporation bearing Khasra No.221/01 admeasuring 225 x 20 mts. and 40 x 140 mts. the petitioner has encroached 10,100 sq. mts. of land. It was complained by the petitioner that without following established

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

procedure of law and on the ground of political vendetta, the demolition is going to be made, therefore, respondent No.4 has taken steps for demarcation of land which was also challenged by W.P.No.3048/2005 according to which it was made clear that Annexure P-9 was quashed and respondent No.4 was not precluded from approaching the Revenue Department for demarcation of land of respondent No.4 as well as of the petitioner in presence of both the parties. Copies of orders dated 11-4-2005 & 24-8-2005 are Annexures R-4-1 & R-4-2, respectively. Accordingly, notice of demarcation to the petitioner and respondent No.4 was issued and the copy of notice is Annexure R-4-3. Therefore, after following due and established procedure of law, demarcation report was obtained, copy of which is Annexure R-4-4 with map and Khasra. Two notices dated 1-5-2006 with postal receipt and 8-6-2006 was issued to the petitioner by officials of respondent No.4. Permission was sought for on 8-6-2006 by the Collector & District Magistrate, Raipur for a date of 9-6-2006 and 10-6-2006 by the Commissioner. The work was not completed, therefore, one day was extended up to 11-6-2006.

In the amendment application (I.A.No.5858/2006) filed on behalf of the petitioner, the petitioner now seeks to amend para 5.8 whereby the petitioner wants to incorporate that the land was purchased by the husband of the petitioner and in para 5.10 she wants to incorporate that in the year 1979 as per the information of the petitioner some of the lands of Village: Mathpuraina was allotted to Municipal Corporation, Raipur for constructing trenching ground, and when the land was allotted to Municipal Corporation,

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Raipur, according to the information of the petitioner, Collector, Raipur vide its order dated 8-3-1979 bearing Nazul No.306/79 allotted adjoining land of the petitioner to Municipal Corporation, Raipur as trenching ground. The demarcation exercise also took place in the year 1994. In the year 1997, an effort was made for shifting diary on the land, which was allotted to Municipal Corporation, Raipur, for the purpose of trenching ground.

Therefore, allotment of land, adjoining to the land of the petitioner, to respondent No.4 has been established as per the averments made by the petitioner herself. The question remains as to whether the petitioner has encroached upon the land of respondent No.4 i.e. Municipal Corporation, Raipur, which was allotted to Municipal Corporation, Raipur. While disposing of W.P.No.3048/2005 filed by the petitioner, on 24-8-2005, it was observed that "it is made clear that that respondent No.4 is not precluded from approaching the Revenue Department for demarcation of the land of respondent No.4 as well as of the petitioner in presence of both the parties, in accordance with law, and to take further steps, in accordance with law. It appears that thereafter, respondent No.4 approached the Tehsildar and the Tehsildar gave notice to the petitioner for demarcation of the land of the petitioner. From the proceeding, it appears that first day was fixed as 21-3-2006. The Tehsildar on the request of respondent No.4 registered the case and issued notice to the parties to remain present on 29-3-2006 for demarcation of the land and Halka Patwaris were also asked to remain present. On 29-3-2006, one Santosh Agrawal appeared on behalf of the petitioner and requested for adjournment, as the petitioner is said to have

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gone to Delhi for taking treatment, on which next date for demarcation was fixed as 24-4-2006. On that day also, Santosh Agrawal again appeared and requested for further adjournment, on which the Tehsildar prepared the demarcation report and the Municipal Corporation submitted its report that there is encroachment on the land admeasuring 10,100 sq. mts. by the petitioner.

Therefore, in view of the above facts, there are disputed facts involved in this matter. The petitioner is claiming that the land on which the structure is standing belongs to her, whereas, the Municipal Corporation claims that the land belongs to them, as such, disputed facts cannot be settled in this writ jurisdiction, and the same require evidence to be adduced by both the parties in support of their claim. In the circumstances, the petition is liable to be dismissed on this ground only. Hence, this application for amendment (I.A.No.5858/2006) is unnecessary for the reason that even the writ petition involves disputed facts, which is not maintainable. Therefore, the application for amendment as well as the writ petition is dismissed on the ground that disputed facts are involved in this writ petition, which require detailed enquiry.

The petitioner, if so advised, may approach the Civil Court for redressal of her grievances. On the request of learned counsel for the petitioner, seven days' time from today is allowed to the petitioner to approach the Civil Court, if so advised, and from today, the respondents should not proceed with any demolition for the next seven days. The stay granted earlier stands vacated.

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Soma	The writ petition as also the application for amendment (I.A. No.5858/2006) stand dismissed. No order as to costs. Parties are entitled for certified copy of this order. **Sd/-** **L.C.Bhadoo** **Judge**	

(पीछे देखिये)